



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/171350

PRELIMINARY RECITALS

Pursuant to a petition filed January 11, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on February 11, 2016, at Racine, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner was overpaid \$6,314 in FoodShare (FS) benefits for the period from September 1, 2013 to August 31, 2015.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

|

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Racine County Department of Human Services
1717 Taylor Ave
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. On December 18, 2015 the agency sent the petitioner the two FoodShare (FS) overpayment notices. The first notice stated that under claim number [REDACTED] the petitioner was overpaid \$3,445.00 in FS benefits from September 1, 2013 to August 31, 2014. The next notice stated that

under claim Number [REDACTED] the petitioner was overpaid \$2,869.00 in FS benefits from September 1, 2014 to August 31, 2015.

3. The agency determined that the petitioner was overpaid FS benefits after a prior fair hearing decision issued for ALJ Ishii. This petitioner is [REDACTED]'s daughter-in-law. [REDACTED] has guardianship of a grandchild, [REDACTED]. Previously both this petitioner and [REDACTED] included the child, [REDACTED] in their household. In the prior decision ALJ Ishii concluded that child, [REDACTED] should be in [REDACTED]'s household. [REDACTED] works in Green Bay, WI, with a permanent address in Racine, WI. This address is the same as the petitioner. The petitioner cares for child, [REDACTED] when [REDACTED] is away working in Green Bay, WI.
4. After ALJ Ishii's decision, the agency concluded that child [REDACTED] had to also be included in the petitioner's household. The agency then reasoned that if [REDACTED] is included in the petitioner's household, [REDACTED] had to be included in the FS household because he is [REDACTED]'s guardian.
5. [REDACTED] should be included in [REDACTED]'s household. [REDACTED] should not have been included in the petitioner's FS household. [REDACTED] should also not be included in the petitioner's FS household.
6. The petitioner's FS household size during the overpayment period from September 1, 2013 to August 31, 2015 is three.
7. On January 13, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

The Federal regulation concerning FoodShare overpayments requires a State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 *Code of Federal Regulations (CFR)* § 273.18(b), see also *FoodShare Wisconsin Handbook (FSH)*, §7.3.2.

Generally FS overpayments arise when a person underreports his or her income or when there is an increase in income that is not reported. Sometimes there is an issue of a father or boyfriend in the home that is unreported to the agency. This case is unique in that there is no dispute that the petitioner's father-in-law has guardianship of the child, [REDACTED]. This father-in-law works in Green Bay, WI, but resides and has permanent residence in Racine, WI. The petitioner also lives in the home in Racine, WI. The petitioner takes care of the child, [REDACTED], when the father-in-law is away working in Green Bay, WI. The issue for this appeal is whether the child, [REDACTED], and the father-in-law should have been included in the petitioner's FS household during the overpayment period.

A FS household includes people living together and purchasing food together. 7 *C.F.R.* § 273.1(a)(3); *FSH*, §3.3.1.1. A FS household does NOT include a person who lives with the group, but purchases and prepares meals separately from the group. 7 *C.F.R.* § 273.1(a)(2); *FSH*, §3.3.1.1. If a child is included in a FS household, then the child's parent or guardian must also be included in the FS household. 7 *C.F.R.* § 273.1(b)(iii); *FSH*, §3.3.1.1. The only exception to this rule is if the child is a foster child. *Id.*

I note that [REDACTED] is not with [REDACTED]'s parents because [REDACTED] was removed from the parent's home through a CHIPS (child in need of protection and services) case. Given that the petitioner's father-in-law is now the guardian of the child, my assumption is that the CHIPS order terminated with a Chapter 48 guardianship appointing the father-in-law as guardian. This alleviates the Human Services Department of kinship payments or foster care payments for the child.

In ALJ Ishii's prior decision, she concluded that [REDACTED] should have been included in the father-in-law's household. The agency then concluded that because the petitioner cares for the child when the father-in-law is in Green Bay, Wisconsin, she purchases and prepares meals for [REDACTED]. There is no evidence of this. If she is simply caring for [REDACTED], but the guardian purchases [REDACTED]'s foods, which is prepared separately, then [REDACTED] should not be included in this petitioner's FS household. I note that it is common for kids to eat macaroni, grilled cheese, chicken nuggets, or other child friendly food while the adults have essentially a different more adult type meal. This is what appears to be happening in this case.

This is a case of the entire family stepping up to help with the care for [REDACTED] while his parents are unwilling or unable to care for him. The agency appears to use this fact as a sword against this family. The agency incorrectly included [REDACTED] in the petitioner's household. If [REDACTED] is not in the household, then his guardian also must not be in the petitioner's FS household.

Following the hearing, the agency submitted FS budgets with [REDACTED] and his guardian not included in the household. There are months and months of budgets. Even with these budgets given the information that I have it is impossible for me to determine if there was an overpayment and the amount of this potential overpayment. For that reason, I am remanding this case to the agency to re-determine whether there is a FS overpayment, and the amount of the overpayment without [REDACTED] and [REDACTED] included in the FS household.

CONCLUSIONS OF LAW

The agency incorrectly determined that the petitioner was overpaid \$6,314 in FoodShare (FS) benefits for the period from September 1, 2013 to August 31, 2015.

THEREFORE, it is

ORDERED

That this case is remanded to the agency with instruction to rescind overpayment claim numbers [REDACTED] and [REDACTED]. The agency must then re-determine whether there is an overpayment from September 1, 2013 to August 31, 2015 with [REDACTED] and his guardian removed from the FS household. If an overpayment still exists, the agency shall issue new overpayment notices with new appeal rights. The agency shall comply with this order within 10 days from the date of decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of

Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 2nd day of March, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 2, 2016.

Racine County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability